

REMARKS

Reconsideration of this application as amended is respectfully requested. Claims 1, 4 and 19-24 have been amended; claim 2 has been cancelled; claim 33 was previously cancelled; and claim 36 has been newly inserted. No new matter has been added by these amendments. Accordingly, claims 1, 3-32 and 34-36 are in this application and are presented for the Examiner's consideration in view of the above amendments, the comments which follow, and the attached Declaration Under Rule 132 of Jean-Louis Gueret.

In the Official Action, claims 1-32, 34 and 35 were rejected under 35 U.S.C. § 103(a) as being obvious over Japanese Patent No. 55-136409 to Anakama ("*Anakama*") in view of U.S. Patent No. 5,918,994 to Gueret ("*Gueret*"). Applicant respectfully traverses this rejection.

Applicant would initially direct the Examiner's attention to the requirement in claim 1 for

said twisted-wire core being bent such that substantially all points of said bristle-carrying portion form an angle greater than 0° and less than about 20° relative to said longitudinal axis of said end portion of said rod.

Applicant respectfully submits that neither *Anakama* nor *Gueret*, alone or in combination, teaches or suggests the foregoing limitation.

Applicant submits with the accompanying Information Disclosure Statement a verified English translation of the *Anakama* reference. As noted in this translation, the *Anakama* reference teaches that the bristle portion of the applicator is

oriented at an angle of about 30° with respect to the wand portion of the applicator. (*Anakama* translation, p. 7 of source.) According to *Anakama*, the purpose of inclining the bristles at such an angle with respect to the wand is so that, during the application of mascara to eyelashes, the wand will be spaced away from the cheek and other portions of the user, thereby eliminating the longstanding problem of having mascara from the wand deposited on the user in places other than the eyelashes. (*Anakama* translation, p. 8 of source.) Nothing in *Anakama* suggests that the angle between the bristle portion and the wand portion of the applicator can be less than about 30°. Indeed, applicant notes that at smaller angles the wand of the applicator would not be sufficiently spaced from the user's face to avoid contact therewith. Thus, at these smaller angles, the advantages of *Anakama* plainly would not be realized.

As set forth in the present application, applicant seeks to orient the bristles at angles which are significantly less than the 30° angle taught by *Anakama*. In that regard, reference is made to the accompanying Declaration of Jean-Louis Gueret, the sole inventor on the present application. (Reference to the Declaration will be made as follows: "Gueret Decl. ¶ ____".) According to Mr. Gueret, orienting the bristle-carrying portion of an applicator at a relatively small angle to the longitudinal axis of the applicator rod enabled a greater amount

of the material in the receptacle to be retained on the bristles. (Gueret Decl. ¶ 6.) This result was unexpected. (Gueret Decl. ¶ 6.) The retention of a greater amount of material on the bristles enables greater amounts of such material to be applied to keratinous fibers, and has thus met a long-felt need in the art. (Gueret Decl. ¶ 6.)

In his Declaration, Mr. Gueret provides the results of three experiments which he conducted, and which support the range of angles recited in claim 1. The three experiments were substantially identical, except for the angle of the bristle-carrying portion relative to the longitudinal axis of the applicator rod. (Gueret Decl. ¶ 8.) In Example A, there was an angle of 0° between the bristle-carrying portion and the longitudinal axis of the applicator rod, i.e., the bristle-carrying portion and the applicator rod were colinear. (Gueret Decl. ¶ 9a.) In Example B, there was an angle of 8° between the bristle-carrying portion and the longitudinal axis of the applicator rod. (Gueret Decl. ¶ 9b.) In Example C, there was an angle of 30° between the bristle-carrying portion and the longitudinal axis of the applicator rod. (Gueret Decl. ¶ 9c.) The results of the three experiments are set forth in the table of Exhibit 1. (Gueret Decl. ¶ 10.) As these results demonstrate, the greatest weight of material was retained on the bristles of Example B in which the angle between

the bristle-carrying portion and the longitudinal axis of the applicator rod was 8° . In fact, Example B retained about 7.5% more material on the bristles than Example A, and almost 20% more material on the bristles than Example C.

As explained by Mr. Gueret, one of ordinary skill in the art would not expect these results. (Gueret Decl. ¶ 13.) That is, receptacles for materials such as mascara typically include a wiper in the neck of the receptacle. As the applicator is removed from the receptacle, the wiper creates a wiping action on the bristles. One skilled in the art would expect a greater wiping action to occur when the bristles are oriented at an angle to the longitudinal axis of the applicator rod, and hence would expect the retention of less material on the bristles. (Gueret Decl. ¶ 12.) Similarly, one of ordinary skill in the art would expect the least wiping action when the bristle-carrying portion forms an angle of 0° with the longitudinal axis of the applicator rod, resulting in a maximum retention of material on the bristles. (Gueret Decl. ¶ 12.) However, this did not occur in Mr. Gueret's experiments. Indeed, as noted above, Mr. Gueret found that significantly more material was retained on the bristles when the bristle-carrying portion formed an angle of 8° with the longitudinal axis of the applicator rod than was retained when the bristle-carrying portion formed an angle of 0° with the longitudinal axis of the

applicator rod. Not only was this result unexpected, but Mr. Gueret describes the result as "remarkable." (Gueret Decl. ¶ 13.)

It is thus clear from the foregoing that the range of angles set forth in claim 1 is neither taught nor suggested by *Anakama*, and is more than a mere optimization of the angle taught by *Anakama*. To the contrary, *Anakama* teaches away from the smaller angles recited in claim 1, since such smaller angles would cause a recurrence of the very problems which *Anakama* intended to address.

Applicant would also direct the Examiner's attention to the requirement in claim 1 for

said receptacle having an inner wall,
said rod and said brush being spaced
from said inner wall in said assembled
condition.

Plainly, nothing in *Anakama* suggests that, with the bristles of the applicator oriented at an angle of about 30° relative to the applicator wand, the bristles do not contact the wall of the receptacle when the applicator is received in the receptacle in an assembled condition.

Gueret fails to overcome the deficiencies of *Anakama* discussed above. In that regard, the Examiner has cited *Gueret* merely as teaching mascara brushes having a twisted wire core, non-circular cross-sections, longitudinal ribs, planar surfaces, concave surfaces, constant cross-sections, varying

cross-sections, and cross-sections that vary in size, but not in shape. Nonetheless, applicant notes that nothing in *Gueret* suggests an applicator in which the bristle-carrying portion is oriented at an angle other than 0° relative to the longitudinal axis of the applicator rod. It follows that *Gueret* fails to teach an applicator in which an angled bristle-carrying portion is spaced from the inner wall of its receptacle in the assembled condition.

In view of the foregoing, applicant submits that claim 1 patentably distinguishes over *Anakama* and *Gueret*, either alone or in any combination in which the Examiner contends can be made therefrom. Accordingly, applicant submits that claim 1 is in condition for immediate allowance.

Claims 3-32 and 34-35 depend either directly or indirectly from claim 1 and include all of the limitations of that claim. For at least this reason, applicant submits that these dependent claims also distinguish patentably over the combination of *Anakama* and *Gueret* such as to warrant their immediate allowance, which action is respectfully requested.

In addition, applicant notes the following requirement in claim 4

said bristle-carrying portion includes
a middle and a distal end portion
extending from said middle to a free
end of said bristle-carrying portion,
said longitudinal axis of said end
portion of said rod intersecting said

envelope surface of said distal end portion.

As is clearly evident, neither *Anakama* nor *Gueret* teaches or suggests this feature. This is another reason why applicant believes claim 4 distinguishes over these references.

Claim 5 requires the bristle-carrying portion to form an angle greater than 0° and less than about 15° relative to the longitudinal axis of the end portion of the rod; claim 6 requires this angle to be greater than 0° and less than about 10° ; claim 7 requires this angle to be between 0.2° and about 15° ; claim 8 requires this angle to be between about 1° and about 10° ; and claim 9 requires this angle to be between 5° and about 10° . Clearly, nothing in *Anakama* or *Gueret* suggests any angular orientation within these ranges. Hence, for this additional reason, applicant submits that this is an additional reason by which claims 5-9 patentably distinguish over *Anakama* and *Gueret* such as to warrant their allowance.

Claim 10 requires the remote end of the core to be situated at a distance of less than about 7.5 mm from the longitudinal axis of the end portion of the rod; and claim 11 requires this distance to be less than about 4.5 mm. As nothing in either *Anakama* or *Gueret* suggests this structural relationship, applicant submits that this is an additional reason by which claims 10 and 11 distinguish patentably over these references.

Turning to claims 27 and 28, applicant notes the requirement that the bristles include a compound making it easier to slide over keratinous fibers. Neither *Anakama* nor *Gueret* teaches the use of such compounds. This is an additional reason why applicant submits that claims 27 and 28 patentably distinguish over these references and are in condition for allowance.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: February 24, 2009 Respectfully submitted,

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